

The Hotel Operators' Occupation Tax provides an exemption for "permanent residents," which is defined in Section 2 of the Hotel Operators' Occupation Tax Act as "any person who occupied or has the right to occupy any room or rooms in a hotel for at least 30 consecutive days." (See 35 ILCS 145/2) (This is a PLR.)

November 3, 2003

Dear Xxxxx:

This letter is in response to your letter dated December 18, 2002. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.iltax.com to review regulations, letter rulings and other types of information relevant to your inquiry.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to the AAA for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither the AAA nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

Pursuant to 2 Ill. Adm. Code 1200, the AAA is requesting a Private Letter Ruling regarding the applicability of the Hotel Operators' Occupation Tax Act [35 ILCS 145] on the AAA when renting rooms on behalf of disaster victims and disaster relief workers.

Statement of Fact

Section 3 (d) of the Act provides: *However, such tax is not imposed upon the privilege of engaging in any business in Interstate Commerce or otherwise, which business may not, under the Constitution and Statutes of the United States, be made the subject of taxation by this State.*

The legal status of the AAA as a unique federal instrumentality and charitable corporation has been confirmed by a unanimous decision of the U.S. Supreme Court. That decision upheld the legal status of the AAA as a federal instrumentality and provided the legal framework to ensure that, as a federal instrumentality, the AAA is not subject to taxation. We believe that taxation of the AAA under the Hotel Operator's Occupation Tax Act runs contrary to the Supreme Court's decision in *Department of*

Employment and respectfully ask the Department of Revenue to recognize our exemption from that Act.

The Department of Revenue has previously ruled in favor of the AAA on similar requests related to the applicability of the Telecommunications Excise Tax, the Public Utilities Revenue Act and, most recently on the applicability of the Electricity Excise Tax Law. Copies of those letters are enclosed for your perusal.

In the absence of an affirmative ruling on the above request, we ask the Department of Revenue to rule that the AAA is exempt from the Hotel Operator's Tax Act when the AAA rents rooms for persons who occupy the room for at least 30 consecutive days. During a disaster operation, the AAA will typically rent hotel rooms for disaster volunteers and disaster clients for 30 days or longer.

Section 3 (a) of the Act provides that *"A tax is imposed upon persons engaged in the business of renting, leasing or letting rooms in a hotel at the rate of 5% of 94% of the gross rental receipts from such renting, leasing or letting, excluding, however, from gross rental receipts, the proceeds of such renting, leasing or letting to permanent residents of that hotel and proceeds from the tax imposed under subsection (c) of Section 13 of the Metropolitan Pier and Exposition Authority Act."*

Based on the statutory definition of a "permanent resident" as defined in Section 2(6) of the Act, we believe that rooms occupied by persons for 30 consecutive days or longer in rooms rented by the AAA would qualify for the exemption a provided in the Act.

The Department has not previously ruled on this issue, nor is there litigation or audit pending with respect to this issue. Furthermore, to the best of my knowledge, there are no contrary views regarding the AAA' tax exempt status and no specific trade secret information exists.

We are unable to rule that the AAA is exempt from the Hotel Operators' Occupation Tax by virtue of its status as a federal instrumentality. The Hotel Operators' Occupation Tax Act ("Act") imposes a tax upon persons engaged in the business of renting, leasing or letting rooms in a hotel. The Act specifically authorizes hotel operators to seek reimbursement from their guests for the tax imposed upon them by the Act. See, 35 ILCS 145/3(e). A hotel operator may determine, as a matter of business policy, whether he or she seeks this reimbursement from hotel guests. In other words, the Act does not impose a tax upon hotel guests, but only upon hotel operators. Consequently, there is no "tax" imposed upon the AAA from which it can seek an exemption on the basis of its status as a federal instrumentality. In contrast, the Telecommunications Excise Tax Act and the Electricity Excise Tax Act, which your letter mentions, are taxes imposed upon users of telecommunications and electricity, respectively. Under both these Acts, no tax is imposed on gross receipts from sales to the Federal government, which the Department has ruled includes instrumentalities such as the AAA.

Section 9 of the Act, however, provides that "[p]ersons engaged in the business of renting, leasing or letting rooms in a hotel only to permanent residents are exempt from the provisions of this Act." See, 35 ILCS 145/9. "Permanent resident" is defined in Section 2 of the Act as "any person who occupied or has the right to occupy any room or rooms, in a hotel for at least 30 consecutive days." 35 ILCS 145/2. Consequently, a hotel operator will not incur the Hotel Operators' Occupation Tax when a relief victim assisted by the AAA occupies any room or rooms in the hotel for at least 30 consecutive days, or has the right to occupy any room or rooms in the hotel for at least 30 consecutive days.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at 217.782.2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.iltax.com or contact the Department's Taxpayer Information Division at 217.782.3336.

Very truly yours,

Jerilynn Troxell Gorden
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